

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between Mayra Guerrero, Yesenia Guerrero, Gesel Guerrero, and Juan Quezada ("Plaintiffs") and the City of San José, Ofcr. Dan Pfiefer, Sgt. John Marfia, Ofcr. David Berry, Ofcr. Hieu La, Ofcr. Joel Casey, Ofcr. Devlin Creighton, and Ofcr. Jeff Stults ("Defendants"), collectively referred to as the "Parties."

WHEREAS, Plaintiffs filed an Action against the Defendants on or about April 25, 2011 in the United States District Court for the Northern District of California, case number C11-02017 HRL, entitled Mayra Guerrero, et al., vs. City of San Jose, et al., ("Action");

AND WHEREAS, the Parties now undertake to settle this Action in its entirety, and Plaintiffs and Defendants now undertake to release and extinguish on a final basis any and all claims against the Defendants, arising out of, or in any way connected with, the incident which is the subject of the Action, which occurred on or about October 25, 2009 in San Jose, California, as more fully described in the Complaint filed in this Action ("Incident");

AND WHEREAS Plaintiffs desire to dismiss the Action with prejudice;

NOW THEREFORE, the Parties agree as follows:

1. For consideration of One Hundred Fifty Thousand dollars (\$150,000.00), Plaintiffs on behalf of themselves, their past and present assigns, heirs, executors, and administrators, hereby release and forever discharge the Defendants, their past and present employees, partners, agents, predecessors, successors, consultants, attorneys, and assigns, all of whom expressly deny any

liability, from any and all claims, demands, damages, actions, or suits, known and unknown, relating to, arising out of, or in any way connected with the Incident. A draft in the amount of One Hundred Fifty Thousand dollars (\$150,000.00) shall be made payable to: "John L. Burris, Trustee for Mayra Guerrero, Yesenia Guerrero, Gesel Guerrero and Juan Quezada" and shall be delivered to counsel for Plaintiffs within 35 days of receipt of the signed Settlement Agreement and Release. In consideration for the above-referenced payment, Plaintiffs shall dismiss the Action with prejudice within ten days after service of the draft.

2. The Parties shall cooperate in executing all documents necessary to effectuate this Settlement Agreement and to effectuate the dismissal with prejudice of the Action.

3. Section 1542 of the Civil Code of the State of California provides as follows:

"A General Release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the Release, which if known by him or her must have materially affected his or her settlement with the debtor."

Plaintiffs represent that Civil Code Section 1542 has been read and reviewed with counsel and understood, and that they hereby waive any and all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or any way connected to the Incident based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

4. The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims relating to,

arising out of or any way connected with the Incident. No act taken by the Parties, either previously or in connection with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims heretofore made or an acknowledgment or admission by any party of any fault or liability whatsoever to the other party.

5. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with this Settlement Agreement and the events underlying this Settlement Agreement.

6. The Parties represent that they have had the opportunity to consult with legal counsel and have carefully read and understand the terms of this Settlement Agreement. The terms of this Settlement Agreement are voluntarily accepted for the express purpose of making a full and final compromise and settlement of the Action.

7. This Settlement Agreement represents the entire agreement and understanding between the Parties regarding settlement of the Action and supersedes any and all prior and contemporaneous agreements, representations, and negotiations. This Settlement Agreement may be modified or amended only by a written instrument signed by all Parties hereto.

8. Each person executing this Settlement Agreement on behalf of any other person or persons hereby warrants that they have full authority to do so.

9. Plaintiffs agree to hold the Defendants harmless with regard to any liens or claims for medical treatment and/or expenses they may have incurred as a result of the Incident.

10. This Settlement Agreement shall become effective upon approval by the San Jose City Council in open session.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

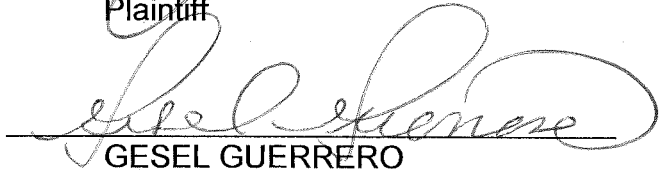
Dated: October 06, 2012


MAYRA GUERRERO
Plaintiff


Dated: October 06, 2012


YESENIA GUERRERO
Plaintiff

Dated: October 08, 2012



GESEL GUERRERO
Plaintiff

Dated: October 06, 2012


JUAN QUEZADA
Plaintiff

Law Office of John L. Burris

Dated: October 8, 2012

By: 
DEWITT M. LACY

Attorney for Plaintiffs

CITY OF SAN JOSE

Dated: October _____, 2012

By: _____

NORA FRIMANN
Assistant City Attorney as
Authorized Agent for the
CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: October 17, 2012

By: _____

CHRISTIAN B. NIELSEN
Chief Deputy City Attorney

Attorney for Defendants